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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LAW OFFICES OF NEJADPOUR &
ASSOCIATES, APLC,

Plaintiff and Appellant,

v.

JUDITH GONZALEZ,

Defendant and Respondent.

B212803

(Los Angeles County
Super. Ct. No. BC364867)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Jerry K. Fields, Judge. Affirmed.

Law Offices of Nejadpour & Associates, Evelyn J. Abasi for Plaintiff and
Appellant.

Law Offices of Bruce R. Fink, Bruce R. Fink for Defendant and Respondent.

Plaintiff Law Offices of Nejadpour & Associates, APLC (the "PLC") appeals the trial court's ruling denying it attorney fees as the prevailing party in this lawsuit to recover outstanding fees from a former client. Finding no error, we affirm.

FACTS

F. Bari Nejadpour is the sole shareholder and CEO of the PLC. Defendant Judith Gonzalez retained the PLC to represent her in a dissolution proceeding. The retainer agreement between Ms. Gonzalez and the PLC provided that the prevailing party in any action to enforce any provision of the retainer agreement would be entitled to the actual attorney fees and costs incurred in the action.

The PLC sued Ms. Gonzalez for unpaid legal fees. The PLC did not retain outside counsel to prosecute the action on its behalf, but prosecuted the action on its own behalf, through its associate, Evelyn Abasi. Thus, for example, the pleadings filed by the PLC were captioned: "LAW OFFICES OF NEJADPOUR & ASSOCIATES, A Professional Law Corporation, Evelyn J. Abasi, SBN 245157," and listed the PLC's address, telephone and fax numbers. Similarly, the PLC's pleadings were signed "Respectfully Submitted, NEJADPOUR & ASSOCIATES, BY: EVELYN J. ABASI, Attorney for Plaintiff."

The trial court entered judgment for the PLC and against Ms. Gonzalez in the amount of \$23,029.60, which figure included \$5,429.60 in interest. The court confirmed that the PLC was the prevailing party in the underlying action.

The PLC then filed a motion for attorney fees pursuant to Civil Code section 1717. The motion was accompanied by attorney Abasi's declaration in which she stated that she was attorney of record for the PLC, and to which she attached billing records which reflected the time which she expended in prosecuting the lawsuit. The billing records were apparently generated by the PLC as they were captioned "NEJADPOUR & ASSOCIATES, APLC, Slip Listing." The PLC requested the award of \$104,121.40 in attorney fees.

After hearing, the trial court denied the PLC's request for attorney fees, based on *Trope v. Katz* (1995) 11 Cal.4th 274 and *Witte v. Kaufman* (2006) 141 Cal.App.4th 1201.

The court specifically found that attorney Abasi was an employee, and not an independent contractor, of the PLC. The court concluded that there was thus no attorney-client relationship between the PLC and Ms. Abasi, which distinguished these facts from those presented in *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084 and *Gilbert v. Master Washer & Stamping Co, Inc.* (2001) 87 Cal.App.4th 212.

The PLC timely filed its Notice of Appeal of the trial court's post-judgment order denying its request for attorney fees.

DISCUSSION

In *Trope v. Katz, supra*, our Supreme Court considered "whether an attorney who chooses to litigate in propria person rather than retain another attorney to represent him in an action to enforce a contract containing an attorney fee provision can nevertheless recover 'reasonable attorney's fees' under Civil Code section 1717 (hereafter section 1717) as compensation for the time and effort expended and the professional business opportunities lost as a result." (11 Cal.4th at p. 277.) The Court first noted that that "an attorney litigating in propria persona cannot be said to 'incur' compensation for his time and his lost business opportunities," as he does not become liable to pay himself compensation in exchange for legal representation. (*Id.* at p. 280.) The Court further stated that permitting recovery under these circumstances would "in effect create two separate classes of pro se litigants – those who are attorneys and those who are not – and grant different rights and remedies to each." (*Id.* at p. 277; see also pp. 285-286.) The Court concluded that neither the language of section 1717 nor the legislative policy underlying it supports such disparate, and unfair, treatment. (*Ibid.*)

While acknowledging the rule of *Trope*, the PLC argues that the facts of this case are more akin to those of *PLCM Group v. Drexler, supra*, 22 Cal.4th 1084. There, the Supreme Court held that the policy considerations at play in *Trope v. Katz, supra*, are wholly absent when in-house lawyers represent their client – that is, their employer – in litigation. Said the Court: "Like private counsel, in-house counsel stand in an attorney-client relationship with the corporation and provide comparable legal services. In the

case of such representation, the trial court retains broad discretion under Civil Code section 1717 to fix an award of attorney fees in a reasonable amount." (*PLCM Group v. Drexler, supra*, 22 Cal.4th at p. 1088.) The Court noted that "A corporation represented by in-house counsel is in an agency relationship, i.e., it has hired an attorney to provide professional legal services on its behalf." (*Id.* at p. 1093.) In addition, "the payment of a salary to in-house attorneys is analogous to hiring a private firm on a retainer." (*Ibid.*)

The PLC contends that it is entitled to its fees under the authority of *PLCM Groups, Inc. v. Drexler*: "[T]he fact that Ms. Abasi is employed by the Corporate Party does not alter the fact that she is being paid by the law firm. Payments to Ms. Abasi for her services rendered on behalf of the Corporation in this action, are payments and obligations that the Corporation incurred as attorneys fees. . . . Thus, Appellant should have been allowed to recover its attorneys fees as being the prevailing party. Ms. Abasi, while providing professional services to Appellant, owed Appellant ethical and fiduciary duties that are present in an attorney-client relationship." The contention lacks merit.

The PLC is not a business organization which chose to invest in an in-house legal department rather than retain outside lawyers to represent it. Rather, the PLC is a law firm in the business of providing legal services to clients. Ms. Abasi is not the PLC's in-house counsel; she is its associate – that is, an employee of the firm hired to provide legal services in the name and on behalf of the firm to the firm's clients.

Nor does *Gilbert v. Master Washer and Stamping Co., Inc., supra*, 87 Cal.App.4th 212, provide authority for an award of fees to the PLC under the facts of this case. In *Gilbert*, a lessee sued its lessor and the lessor's attorney, David Gernsbacher, for breach of the lease. Mr. Gernsbacher was a partner in a law firm, Gernsbacher & McGarrigle, which represented him in the lawsuit. After he won his dismissal from the lawsuit, Gernsbacher sought an attorney fee award pursuant to section 1717. The trial court denied the request, ruling that because he was represented by his own law firm and did not present evidence that he was "obligated to pay" the fees incurred on his behalf by the lawyers who represented him, *Trope v. Katz, supra*, precluded a fee award.

Our colleagues in Division Seven of this District Court of Appeal reversed that ruling. The Court held that Gernsbacher was entitled to recover attorney fees because he was sued in his individual capacity and was represented by other members of the firm. Thus, he was not litigating this matter in propria persona but was represented by counsel, with whom he shared an attorney-client relationship. "There can be no question an attorney-client relationship is also present where an attorney litigant is represented by other attorneys in his or her own firm. In this case, Messrs. Beach and McGarrigle of Gernsbacher & McGarrigle, like the in-house counsel in *PLCM Group* but unlike Messrs. Trope and Trope in *Trope*, represented not their personal interests or even those of their law firm, but the separate and distinct interests of Gernsbacher himself." (*Gilbert, supra*, 87 Cal.App.4th at p. 222, fns. omitted.) Here, in contrast, Ms. Abasi, like the attorneys in *Trope*, was representing the interests of the firm itself, not the separate and distinct interests of a member of the firm. Thus, Gernsbacher does not authorize a fee award in the present case.

In *Witte v. Kaufman, supra*, 171 Cal.App.4th 1201, the plaintiff, an attorney, sued his former client, the client's former counsel, a law firm ("KLA"), and the client's opposing counsel, an individual ("Kaufman"). The trial court granted the defendants' special motions to strike pursuant to Code of Civil Procedure section 425.16, and awarded them attorney fees pursuant to subdivision (c) of that statute. The plaintiff appealed, contending that, pursuant to *Trope v. Katz*, the defendant attorneys were not entitled to a fee award.¹

KLA, the law firm defendant, contended that it was entitled to recover attorney fees because it did not appear in the action in propria persona, but through the representation of three of the firm's attorneys. The *Witte* Court rejected this argument, noting that "The only way KLA could possibly appear in this action is through one or more of its attorneys, or through outside counsel. By KLA's theory, it could never

¹ *Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 523-524, held that the rule of *Trope v. Katz* applies to an award of attorney fees under Code of Civil Procedure section 425.16, subdivision (c).

represent itself in litigation. In *Trope*, the party that was denied attorney fees under Civil Code section 1717 was a law firm that appeared through one of its attorneys." (*Witte v. Kaufman, supra*, 141 Cal.App.4th at p. 1210.)

In contrast, in the instant lawsuit, the PLC sued Ms. Gonzalez in its corporate capacity. The PLC could only prosecute this action through the efforts of an individual – either an employee of the PLC, or outside counsel. It chose to have Ms. Abasi, an employee, litigate the matter. Thus, the PLC prosecuted the action in propria persona. Consequently, it is not entitled to recover attorney fees under Civil Code section 1717.

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.